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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1941**

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# No. 1060

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R. P. DUCK,

*Appellant,*

*vs.*

ARKANSAS CORPORATION COMMISSION.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

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## STATEMENT OF JURISDICTION.

(Filed in the Arkansas Supreme Court February 19, 1942.)

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This case is one in which the validity of an Act of the State of Arkansas, towit, Act No. 367, Vol. 1, page 937, of the Legislative Acts of 1941, approved March 26, 1941, known as "Arkansas Motor Carrier Act, 1941," not yet reported in the official Arkansas Digest, as construed by the Supreme Court of the State of Arkansas, was drawn in question on the grounds that said statute is repugnant to the provisions of Section 8, Article I, of the Constitution of the United States, and to Section 1, Article XIV, of the Amendments to the Constitution of the United States. The

final decision of the Supreme Court of the State of Arkansas, the court of last resort in all causes in the State of Arkansas in which a decision could be had, was in favor of the validity of said statute.

The applicable portions of said statute are sections or parts of sections, 5(a)(12), 5(a)(13), 5(b)(6), 9(a), 9(b), 9(e), 11(d), 13(a), 13(b), 13(c) and 15, which sections read:

> Section 5(a)(12): "The term 'license' means a license issued under this Act to a broker."
>
> Section 5(a)(13): "The term 'broker' means any person not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this Act, or negotiates for or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation."
>
> Section 5(b)(6): "Nothing in this Act shall be construed to include * * * (6) the casual, occasional, of reciprocal transportation of passengers or property for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, except when such transportation is sold, or offered for sale, or provided, or procured, or furnished, or arranged for, by any person who holds himself or itself out as one who sells, or offers for sale transportation wholly or partially subject to said act, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation."
>
> Section 9(a): "Subject to the provisions of this Act, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this Act and the requirements, rules and regula-

tions of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is, or will be required by the present or future public convenience and necessity; otherwise such application shall be denied; and the burden of proof shall be upon the applicant; provided, however, that no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes and between fixed termini, except as such carrier may be authorized to engage in special or charter operations."

Section 9(b): "No certificate shall be issued by the Commission except upon a hearing held at least twenty days (20) after service of notice to interested parties of the time and place thereof."

Section 9(e): "No certificate shall be issued for a total mileage in excess of twenty per cent (20%) of the total mileage within the State Highway System."

Section 11(d): "No permit shall be issued by the Commission except upon a hearing at least twenty (20) days after service of notice to interested parties of the time and place thereof."

Section 13(a): "No person shall for compensation sell or offer for sale transportation subject to this Act or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transportation subject to this Act unless he holds a certificate or permit as provided in this Act. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this Act; * * *."

Section 13(b): "A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able to perform properly the service proposed and to conform to the provisions of this Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license will promote the public interest and the policy declared in this Act; otherwise such application shall be denied. Any broker in operation when this Act takes effect may continue such operation for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, the broker may, under such regulations as the Commission shall prescribe, continue such operations until otherwise ordered by the Commission."

Section 13(c): "The Commission shall prescribe reasonable rules and regulations for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license, and no such license shall be issued or remain in force unless such person shall have furnished a bond or other security approved by the Commission, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements, or arrangements therefor."

Section 15: "No certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with such reasonable rules and regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualification as a self-insurer or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of

any person resulting from the negligent operations, maintenance, or loss or damage, to the property of others. * * *."

(Note: The Act in question contains 28 sections, with many subsections, and is unduly long; but it is believed that the foregoing quoted portions cover the issues here sought to be presented.)

Therefore, in accordance with the rules of the Supreme Court of the United States (Paragraph 2, Rule 36), and with the statutes in such cases made and provided (Section 344, Title 28, U. S. C. A.), petitioner respectfully shows unto this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54), as amended by the Act of April 26, 1928 (Ch. 440, 45 Stat. L. 466), was passed, towit, under Section 237 (a) of the Judicial Code (Section 344, 28 U. S. C. A.), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The said Supreme Court of Arkansas, the Court of last resort in all causes in the State of Arkansas, rendered its decision herein on January 12, 1942, and made the same final on February 9, 1942, on entering its order denying a petition for rehearing, and affirmed the decree of the Chancery Court of Pulaski County, Arkansas, for the reasons, and upon the grounds, stated in the opinion of said Supreme Court, a copy of the decree of said Chancery Court being attached hereto as Exhibit "A" and made a part hereof, and a copy of the opinion of the said Supreme Court being attached hereto as Exhibit "B" and made a part hereof.

The opinion of the Supreme Court of the State of Arkansas has not yet been officially reported.

The final order of affirmance of the Supreme Court of the State of Arkansas was entered in the office of the Clerk of said Court on February 9, 1942.

Appellant is engaged in the business of operating what is commonly termed a "travel bureau" or "transportation agency", his particular business being to contact casual travelers by automobile from or through the State of Arkansas to other States, and travelers from the State of Arkansas to such other States, and to bring together such automobile operator and such traveler in order that they may enter into some agreement satisfactory to themselves to make the trip together. Appellant has nothing to do with the details of the contract, or the trip, or the consideration paid; but, if the parties reach an agreement, appellant is paid a fee by the passenger.

No question of intrastate travel is involved in this case, the entire record dealing with interstate trips, though appellant maintains an office in Little Rock, Arkansas, and transacts his part of the business in Arkansas.

The contention of appellant (the defendant in the trial court and the appellant in the Supreme Court of the State of Arkansas) is that the provisions of the Act under review, as above quoted, requiring of him a bond pursuant to its provisions, and requiring a delay of twenty days for consideration of any application on the part of a casual operator of an automobile for permission to transport the prospective traveler who is produced by appellant, and exempting "casual, occasional or reciprocal transportation * * * by any person not engaged in transportation by motor vehicle as a regular occupation or business, except when such transportation is sold, or offered for sale, or provided, or procured, or furnished or arranged for" by appellant (or others similarly situated) seek to convert private carriers into common carriers and to regulate them as such, and that said provisions are repugnant to both Section 8, Article I, the commerce clause, and to Section 1, Article XIV (of the Amendments), the due process clause of the Constitution of the United States.

No question of reasonable regulation of the business of appellant is here involved. That power on the part of the State is conceded. It was admitted below by appellee that the provisions and requirements of the Act under review were impossible of performance, and that the application of the provisions of the Act would prohibit the business of appellant, and the opinion of the Supreme Court of Arkansas reiterates this admission.

It is believed that the issues presented in this case are distinguishable from the issues determined in the cases of *Williams* v. *State*, 217 U. S. 87, 54 L. Ed. 674, and *Thompson* v. *California*, 85 L. Ed. 793, and other similar cases in which some question of mere regulation was involved, or in which the provisions of the legislation under review tended to remedy the evil sought to be corrected. Those issues are not here involved. The legislation here assailed does not tend to regulate the manner of the use of the highways, but the persons by whom they may be used. It does not tend to prohibit persons from traveling over the highways, unless they transport persons introduced to them by appellant (or by others similarly situated). The sole question here presented is whether the State has the power to convert private carriers into common carriers, by mere legislative fiat, and to regulate them as such, and prohibit a business not alleged, proved, or contended to be bad *per se*, or contrary to public policy, or dangerous to the public health, safety or morals; and it is believed that the question presented is substantial for the reason that, concededly and admittedly, it would destroy the business of appellant.

Cases believed to sustain the jurisdiction of this Court are:

*Butchers' Union* v. *Crescent City, etc.*, 111 U. S. 746, 28 L. Ed. 585;

*Lawton* v. *Steele*, 152 U. S. 133, 38 L. Ed. 385;

*Allgeyer* v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832;

*Adams* v. *Tanner*, 244 U. S. 590, 61 L. Ed. 1336;
*Mich. Util. Com.* v. *Duke*, 266 U. S. 570, 69 L. Ed. 445;
*Buck* v. *Kuykendall*, 267 U. S. 307, 69 L. Ed. 623;
*Frost* v. *Ry. Com.*, 271 U. S. 583, 70 L. Ed. 1101;
*Tyson* v. *Benton*, 273 U. S. 418, 71 L. Ed. 718;
*Smith* v. *Cahoon*, 283 U. S. 553, 75 L. Ed. 1264.

The federal questions here urged were first presented in the Chancery Court of Pulaski County, Arkansas, the state Court of First resort, by pleading the same in the answer interposed, the pertinent portion of said answer being:

"That (even conceding the applicability of the provisions of said Act to the facts of this case) the Act relied on by the Plaintiff herein, as applied to the business of this Defendant is illegal, unconstitutional and void, for the following reasons:

1. Said Act attempts by legislative enactment to make common carriers of private car owners.

2. Said Act attempts to subject a private occupation to regulations applicable only to occupations of a public character.

3. Said Act forbids and attempts to prevent, under the guise of police regulations, an occupation, innocent within itself, which works no harm to the public, or to any member thereof, and which is not within the power of police regulation.

4. The prescriptions of said Act are indefinite, vague and ambiguous.

5. Said Act is arbitrary, capricious, without fair application, unreasonable, discriminatory and attempts to set up unreasonable classifications.

6. Said Act is impossible of performance by Defendant in the business in which the Defendant is engaged, and prohibits the operation of said business, and restricts, obstructs, interferes with and prohibits inter-

state commerce by the parties participating in such business, and is contrary to the provisions of Article I, Section 8, the Commerce Clause, of the Constitution of the United States.

7. Said Act is contrary to the provisions of Article II, Section 8(d) and 18 of the Constitution of the State of Arkansas, and to Amendments V and XIV of the Constitution of the United States, all guaranteeing equal rights, privileges and immunities, and due process, as to all citizens."

The federal questions here sought to be reviewed were preserved and urged in the Supreme Court of Arkansas on the above pleading, and in the briefs and argument, and were determined by said Court adversely to the contentions of appellant, as will more fully appear from the opinion of said Court attached hereto as Exhibit "B" and made a part hereof.

Respectfully submitted,

EDWARD H. COULTER,
*Attorney for Appellant.*

## EXHIBIT "A".

### Decree.

(Entered in the Pulaski Chancery Court, December 2, 1941.)

Now on this 25th day of November, 1941, this cause comes on for hearing, Plaintiff appearing through its Counsel, Jack Holt, Attorney General, by House, Moses & Holmes, Special Attorneys, and Defendant R. P. Duck appearing in person and through Counsel, Coulter & Coulter, and Defendant O. K. Setzler appears not but makes default.

This cause is submitted to the Court upon the Pleadings filed therein and the Testimony of various Witnesses on behalf of Plaintiff, from all of which the Court finds:

That the Defendants are operating Travel Bureaus coming within the definition of Brokers, as defined in Act 367 of the Acts of 1941. That said Defendants are subject to the provisions of said Act and have not made application for regulation by the Arkansas Corporation Commission, as required by the provisions of said Act. The Court finds that it should enter its Order enjoining and restraining the Defendants, and each of them, from operating said Travel Bureaus, either directly or indirectly, in the Cities of Little Rock and North Little Rock, until such time as they shall receive a License or Permit from the Corporation Commission of the State of Arkansas, as provided by Act 367 of the Acts of 1941.

It is, therefore, considered, ordered, adjudged and decreed that Defendants be and they are hereby permanently enjoined from continuing operations as Travel Bureaus or Travel Brokers, as defined by Act 367 of the Acts of 1941, until such time as they shall receive a License or Permit from the Arkansas Corporation Commission to conduct such operations. Defendants are specifically enjoined from selling or offering for sale any transportation, subject to said Act 367, or from negotiating for or holding themselves out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts or arranges for such transportation.

## EXHIBIT "B".

### IN THE SUPREME COURT OF ARKANSAS.

**Opinion.**

(Filed in the Pulaski Chancery Court January 12, 1942.)

Appellee brought this action against appellant and another to enjoin them from operating so-called travel bureaus without first having obtained a permit so to do and without otherwise complying with the provisions of Act No. 367 of the Acts of 1941, commonly known as the "Motor Carrier Act". At the conclusion of the trial the court entered a decree as prayed against both defendants, but only appellant Duck has appealed.

The complaint alleged that appellant owns and operates a travel bureau in the City of Little Rock at 116 Louisiana Street, and advertises same under the name of A. A. Pulaski Travel Bureau; that the action is brought in the Chancery Court under the express authority of Sec. 22(b) of said Act; that under the provisions of Subdivision 13 of Sec. 4 of said Act, operators of travel bureaus are termed "brokers", and in Sec. 13 thereof it is provided that no person shall act as a "broker" as defined in Subdivision 13 of Sec. 4, "either by negotiation or solicitation, advertisement or otherwise, or make any contract, agreement or arrangement to provide, prescribe, furnish or arrange for transportation unless such person holds a broker's license issued by the plaintiff (appellee) herein"; that said Act confers upon it power and authority to regulate the business of appellant and to make and establish rules and reasonable requirements with respect to the licensing and otherwise regulating the practices of appellant or any other such broker; and that appellant has neglected, failed and refused to procure a license or permit from it and to subject himself to proper regulation by it for the protection of the public.

To this complaint a demurrer was interposed and overruled, as also a motion to make more definite and certain. Thereupon an answer was filed denying the allegations of the complaint and alleging affirmatively that the Act in

question has no application to appellant for the reason (1) that he is not selling, or offering for sale, transportation subject to the provisions of said Act, "or negotiating for or holding out, by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts, or arranges for any transportation subject to the provisions of said Act." and (2) that other provisions of the Act exclude the business transacted by him, and (3) that he holds a lawful permit issued before the Act in question became effective and is excluded by Sec. 8(d) thereof. And further the Act relied on is unconstitutional for several reasons.

It is conceded that appellant has not applied for nor received a permit from appellee to operate a travel bureau. It was shown that he advertises in the Little Rock Telephone Directory and the Little Rock daily newspapers. The telephone directory ad being: "A. A. Pulaski Travel Bureau. Travel, share expense plan. Cars to all points daily. Phone 2-1483, Little Rock, Arkansas, 116 Louisiana. A. A. Pulaski Travel Bureau." An identical ad appeared in the Arkansas Gazette of November 27, 1941. Other evidence was introduced to show that appellant was engaged in the business of arranging for or actually selling transportation for passengers in either casual or occasional carriers or by regular carriers of passengers posing as casual or occasional carriers.

It is first argued that the court erred in not sustaining the demurrer. We think not. The complaint sufficiently alleged that appellant, was operating a business specifically covered by the Act, and that he was doing so illegally in that he had failed and refused to make application for regulation and to secure a license or permit to operate. This was sufficient to apprise appellant of the issue he was to meet. For the same reason the court correctly overruled the motion to make more specific. Other questions are suggested and argued, including the sufficiency of the evidence to support the decree, which we dispose of by saying we find them without merit sufficient for a reversal.

The only serious or important question in the case, as we view it, is the constitutionality of that portion of said Act 367, applicable to the business of appellant. A "broker" is defined in Subsection 13 of Sec. 5(a) of said

act as follows: "The term 'broker' means any person not included in the term 'motor carrier' and not a *bona fide* employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this Act, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation." It will be noticed by the above that the transportation handled by a broker must be "transportation subject to this Act." By Subsection 8 of Sec. 5(a), it is provided: "The term 'contract carrier by motor vehicle' means any person, not a common carrier included under paragraph 7, Sec. 5(a), of this Act, who or which, under individual contracts or agreements, and whether directly or indirectly or by a lease of equipment or franchise rights, or any other arrangement, transports passengers or property by motor vehicle for compensation." The exemption clause provides: "Nothing in this Act shall be construed to include * * * the casual, occasional, or reciprocal transportation of passengers or property for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, * * * "* * * except when such transportation is sold, or offered for sale, or provided, or procured, or furnished or arranged for, by any person who holds himself or itself out as one who sells, or offers for sale transportation wholly or partially subject to said act, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation."

It thus appears that the Act does not apply to "the casual, occasional, or reciprocal transportation of passengers" by one not so engaged as a regular business, unless such transportation is arranged by a travel bureau, or a broker, as above defined. One of the contentions of appellant is that the act does not apply to him, and that, if it does, it is unconstitutional because it discriminates against him, in that, if the casual operator of a motor car arranges with the passenger for transportation, such contract is not prohibited, but that, if he brings the two together and they make the arrangement for transportation, it is prohibited. And

so it is. Therefore, the Act does apply to him and all others engaged in the operation of travel bureaus. Nor can we agree that the Act is unconstitutional for the reasons suggested, as it applies to all brokers, all persons engaged in the travel bureau business, and is, therefore, not discriminatory.

Section 13 of said Act reads as follows: "(a) No person shall for compensation sell or offer for sale transportation subject to this Act or shall make any contract, agreement, or arrangement to provide, procure, furnish or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions; provided, however, that no such person shall engage in transportation subject to this Act unless he holds a certificate or permit as provided in this Act. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this Act; and provided further, that the provisions of this paragraph shall not apply to any carrier holding a certificate or a permit under the provisions of Act or to any *bona fide* employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers holding like certificates or permits or with a common carrier by railroad, express, or water. (b) A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this Act and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, will promote the public interest and the policy declared in this Act; otherwise such application shall be denied. Any broker in operation when this Act takes effect may continue such

operation for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, the broker may, under such regulations as the Commission shall prescribe, continue such operations until otherwise ordered by the Commission. (c) The Commission shall prescribe reasonable rules and regulations for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license, and no such license shall be issued or remain in force unless such person shall have furnished a bond or other security approved by the Commission, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements, or arrangements therefor. (d) The Commission and its agents shall have the same authority to accounts, reports, and records, including inspection and preservation thereof, of any person holding a brokerage license issued under the provisions of this section, that they have under this Act with respect to motor carriers subject thereto."

It is conceded that the requiring of a broker to obtain a license is a reasonable regulation, but it is said that, when considered in connection with (b), (c) and (d) of said Sec. 13, the requirements are impossible of performance and amount to an outright prohibition of the business, in violation of the due process and equal rights clauses of both the state and federal constitutions. We do not now determine whether such is the effect of said provisions, or whether, under rules that might be established by appellee, appellant could comply with the Act and conduct his business under a permit. We are not certain the Act has the effect contended for, even though counsel for appellee says it does. The fact remains that appellant has not applied for a permit under the Act. But, even if it does, in effect, prohibit the business, because impossible of compliance with the terms of the Act, we are unwilling to say the legislature exceeded its authority in enacting the statute. We think what the Supreme Court of Tennessee said, concerning the effect of a similar statute of that state, in *Bowen* v. *Hannah* (Tenn.), 71 S. W. 2d 672, is the correct conclusion to be reached and is apropos here. It was there said: "The

flexible and comprehensive doctrine of the police power is justifiably invoked, as it may always be for the public safety and welfare in the protection of personal and property rights. Those occupations which are inherently subject to misuse, out of which may readily come oppression and fraud and crime, may not only be regulated, hedged about with safeguards, as a condition of their doing, but may be altogether prohibited, in the wisdom of the legislature, in the exercise of the police power. It is a matter of common knowledge that danger to life and limb and property is attendant upon the practice of conveying unknown and unvouched for persons, or being conveyed by them in automobiles over the highways. This is especially true when the distances are considerable, through long stretches of sparsely settled districts. Prudent drivers no longer follow the practice of yielding to solicitations for transportation from strangers. And prudent travelers are wary of accepting invitations from strangers for such transportation. The opportunities afforded for holdups, robbery, kidnapping, and impositions of many kinds are unlimited, and illustrations of such happenings are common.

"Why then was it not only the privilege, but the duty of the legislature to regulate most strictly the business of the intermediary who proposes to make a profit out of bringing together persons who seek to transport and be transported under such conditions? What is known as 'hitch-hiking' is prohibited altogether by many ordinances and some statutes. These laws prohibit direct solicitation of such engagements, as conducive to danger to the parties affected and a public menace. If one desires to exercise the privilege of holding himself out to the public as a medium through whom negotiations may be had for such transportation, with its manifest elements of danger already indicated, why should he not be required, first, to make a satisfactory showing of character and responsibility, and, second, to guarantee by indemnity bond that the carriers for whom he contracts will perform in good faith and with reasonable care? The effect is only to limit his dealings in this hazardous enterprise to those for whose integrity he can vouch, and of whose responsibility against reckless-

ness he is sufficiently assured, by indemnity insurance, or otherwise. In view of the nature of the occupation he has chosen, wide discretion is vested in the legislature to determine the extent and character of the restrictions proper to be applied.

"It is insisted that the requirements in the Act for bonds are impossible of compliance, and therefore prohibitive in effect of the business, thus depriving the complainant below of property rights. If such requirements are essential to protection from the danger inherent, then, nevertheless, it is within the police power to prescribe them, since, if the business cannot be safely conducted, it may be prohibited altogether. And this court has recently declared that 'exercise of the police power, otherwise valid and constitutional, cannot be defeated because property rights are taken or destroyed'."

Similar views are expressed in other cases: *Martin* v. *U. S.*, 100 Fed. 2d 490; *Finn* v. *R. R. Com.*, 2 F. Supp. 891; *Francis* v. *Allen* (Ariz.), 96 Pac. 2d 277; *People* v. *Henry* (Calif.), 21 Pac. 2d 672; *Herring* v. *State* (Okla.), 64 Pac. 2d 921. Appellant cites and relies on three Texas cases, which we think express the minority view and we decline to follow them. The Oklahoma court, in the Herring case, *supra*, said: "In these modern days the congestion of traffic on the highways, the enormous number of accidents with a great toll of death and injuries, make restrictive regulation of the use of the highways imperative and has tended to make more liberal the decisions of the courts in upholding state legislation on the subject." The Act under consideration is one form of restrictive legislation in relation to the use of the highways. There are many others. Speed thereon is limited to 50 miles per hour. Hitch-hiking is prohibited. Section 6737, Pope's Digest. Drivers' licenses are required. Overloading is prohibited. Bonds are required of all carriers for hire of persons or property. So, we can see no valid objection to a statute that prescribes the rules under which appellant may do business.

The argument made by appellant as to the invalidity of the Act because it interferes with interstate commerce is unsound. Appellant's business is wholly within the state.

The fact that he arranges for transportation of passengers in motor cars for points outside this state does not make his business one of interstate commerce. But assuming that the Act does incidentally affect interstate commerce, the rule announced by all the courts, and especially by the Supreme Court of the United States, is that a state statute, enacted in the exercise of the police powers, will be sustained even though it may indirectly or remotely affect interstate commerce. It was so held in *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, 53 S. Ct. 577, 77 L. Ed. 1053, 85 A. L. R. 1131, quoted in the Bowen Case, *supra*, where Mr. Justice Brandeis, speaking for the court, said: "Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a state function, whether the locus be private property or the public highways. Congress has not dealt with the subject. 'Hence, even where the motor cars are used exclusively in interstate commerce, a state may freely exact registration of the vehicle and operator's license' (citing numerous cases). And, with application by analogy to the instant case, 'may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 365, 566, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A. L. R. 1402'." See, also, *South Carolina Highway Dept.* v. *Barnwell Bros., Inc.*, 303 U. S. 177, 82 L. Ed. 734.

We, therefore, conclude that the complaint states a cause of action in a court of competent jurisdiction; that the act applies to the business in which appellant is engaged; and that the Act is not open to the attack made against it.

The decree is accordingly affirmed.

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**Judgment of the Supreme Court of Arkansas.**

(Entered in Supreme Court of Arkansas January 12, 1942.)

This cause came on to be heard upon the transcript of the record of the Chancery Court of Pulaski County, and was argued by solicitors, on consideration whereof it is

the opinion of the Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said appellant all its costs in this court in this cause expended, and have execution thereof.

(9478)